

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Implementation of Section 207 of the)
Telecommunications Act of 1996)
)
Restrictions on Over-the-Air)
Reception Devices: Television Broadcast)
and Multichannel Multipoint Distribution)
Service)

CS Docket No. 96-83

RECEIVED
MAY - 6 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
DOCKET FILE COPY ORIGINAL

To: The Commission - Mail Stop 1170

**COMMENTS OF THE PUBLIC BROADCASTING SERVICE AND
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS**

1. The Public Broadcasting Service ("PBS") and the Association of America's Public Television Stations ("APTS") hereby submit these Comments in response to the Commission's *Notice of Proposed Rule Making* ("Notice") in the above-referenced proceeding, FCC 96-151, released April 4, 1996. PBS and APTS are nonprofit organizations whose members comprise the licensees of nearly all of the nation's 351 noncommercial educational television stations. PBS provides program distribution and other services to its members. PBS is also a leader in the development of new and improved television technologies and frequently speaks for the public television community in matters relating to TV technology. APTS engages in planning and research activities on behalf of its members, as well as representing them in legislative and policy matters before the Commission, Congress, and the Executive Branch.

No. of Copies rec'd 0711
List ABCDE

2. PBS and APTS urge the Commission to adopt a presumption against all state, local, and private restrictions on the installation and use of outdoor antennas for receiving broadcast television signals. The growth of modern society and the improvement of the quality of life of our nation's citizens are becoming more and more intertwined not only with the dissemination of information but also with access to information from diverse sources. Television is one of the primary sources, if not the primary source, of information for most Americans today; and restrictions on television receiving antennas cut off one of the most important methods of delivering information to the public. Consumers subject to antenna restrictions are forced to rely on the facilities of a single, monopoly service provider -- either a cable television system or a master television antenna ("MATV") system operator (assuming one is available) -- for their television programming services.^{1/} This result is highly undesirable and should be avoided to the maximum extent possible.

3. It is especially important that every person within the reach of public television broadcast signals be able to receive those signals using whatever available technology they wish and without paying a fee to a technology-provider if they so choose. Public television is the principal video service whose content is not dictated by commercial pressures and motivations. The content of public television programming reflects that difference and offers cultural, children's and other programming that is not widely available elsewhere and certainly not available elsewhere without charge to the viewer. Considerable public funding and private

^{1/} In most situations where outdoor TV receiving antennas are prohibited, the owner of the building or a real estate developer enters into a business arrangement with a cable or MATV vendor or supplies MATV service itself. This business arrangement often requires utilization by virtually all occupants of the building or residents of the development to be economically successful.

contributions have been invested in public television and are contributed to public television every year. Public television is a resource for all of the people and must be made available to all of the people.^{2/}

4. Congress has clearly given the Commission the power to pre-empt local restrictions on television antennas and has indeed directed it to do so. As observed in the *Notice*, Section 207 of the Telecommunications Act of 1996 Act directs that the Commission shall, "pursuant to Section 303 of the Communications Act, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals..." Congress clearly intends that regulations of the kind proposed in the *Notice* be adopted.^{3/}

5. Accordingly, to preserve viewer freedom of choice, to enhance competition, and to allow all citizens to enjoy the full benefits of public television, PBS and APTS encourage the Commission to adopt the proposals made in the *Notice*. The Commission should establish a presumption against all restrictions on over-the-air reception by state or local regulation or

^{2/} Over-the-air television broadcasting is also often a critical resource in times of natural disaster. When hurricanes, tornados and other natural disasters strike, cable TV and other wired systems are often destroyed or damaged. While broadcast towers may also be damaged, over-the-air signals are often restored first, and viewers must rely on over-the-air service. Our national safety often depends on such service, and each individual viewer's ability to receive it must be preserved.

^{3/} PBS and APTS favor the protection of MMDS receiving antennas as well, as MMDS receiving antennas are often used for reception of not only commercial programming but instructional programming as well. This is particularly so when MMDS operators lease excess time on stations in the Instructional Television Fixed Service ("ITFS") and the ITFS licensee provides instructional services during its reserved air time. See Section 74.931(e) of the Commission's Rules.

private covenant, as all such restrictions, regardless of who imposes them, are equally harmful to the public interest and contrary to the intent of Congress.

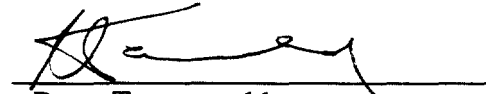
Paula A. Jameson, Esq.
Vice President, General Counsel,
and Secretary

Gary P. Poon, Esq.
Assistant General Counsel
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314-1698
Tel. 703-739-7532
Fax 703-739-5358

Marilyn Morhman-Gillis, Esq.
Vice President, Policy & Legal Affairs
Lonna M. Thompson, Esq.
Director, Legal Affairs
Association of America's Public
Television Stations
1350 Connecticut Ave., N.W., Suite 200
Washington, DC 20036
Tel. 202-887-1700
Fax 202-293-2422

May 6, 1996

Respectfully submitted,


Peter Tannenwald

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

Counsel for the Public Broadcasting
Service and the Association of
America's Public Television Stations